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SUPREME COURT

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 140.
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In Error to the Supreme Court of the State of Illinois.

PETITION FOR REHEARING.

JOHN J. HERRICK,
DAVID FALES,
Attorneys for Plaintiffs in Error.

THE GUNTHORP-WARREN PRINTING CO., 118 RANDOLPH ST., CHICAGO.

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PETITION FOR REHEARING.

To the Honorable the Justices of the Supreme Court of the United States:

The plaintiff in error, The Board of Trustees of the Chicago Theological Seminary, respectfully petitions the court to grant a rehearing in the above causes.

The opinion of the court proceeds largely on lines not pre-

sented by the brief for defendant in error, and therefore not discussed by us.

In view of this, and of the great importance to plaintiff in error of the decision, and of what we believe to be errors in the reasoning by which the court reaches its conclusion, and of the fact that three of the judges dissented and the majority opinion states that its conclusion to "adopt the views of the state court," and therefore affirm the judgment, was reached "with some hesitation," we respectfully ask a rehearing.

The undisputed facts show that for more than twenty years after the charter was granted, the total exemption claimed by plaintiff in error was not questioned, and that for nineteen years subsequently, during which, at intervals, taxes were levied on the property, the decision of the trial court in each year was that the exemption was total, and this decision was continuously acquiesced in by the state.

It was not until more than forty years after the charter was granted—the period after the grant of the charter and before the decision of the State Supreme Court in 174 Ill.—that any court decided that the exemption was partial.

The grounds on which the opinion reaches the conclusion that the property in question was not exempt from taxation, shortly stated, are:

(1) That the provision in Section 6 of the Act that "This *Act* * * * shall be *construed liberally in all courts* for the purposes therein expressed," does not apply to the provision for exemption from taxation (Section 5), and that therefore the same rule of strict construction should be applied as if there were no such provision requiring a liberal construction of "this Act" in the charter; and that for that reason, if there is "room for reasonable doubt whether a

total or only a partial exemption was meant, the partial exemption should alone be recognized."

(2) The opinion, after quoting at length from the opinion of the Supreme Court of Illinois (174 Ill.), which is based wholly on the rule of strict construction, and on what we claim to be an erroneous view of the meaning of that rule, says:

"We think there is *force* in this reasoning, and we are *disposed* to concur in *the result* arrived at."

(3) After stating that "the judges of the Supreme Court of Illinois have unanimously taken" the view that only a partial exemption was intended, the court say:

"*Great weight* ought also to be attached to the decision of a State court, regarding questions of taxation or exemption therefrom under *the constitution or laws* of its own State. * * * The decision of the State Court *is entitled to exercise marked influence upon the question this court is called upon to decide*, and where it cannot be said that the decision is *in itself unreasonable or in violation of the plain language of the statute*, we ought, in cases engendering a fair doubt, to follow the State court in *its interpretation of the statutes* of its own State."

The conclusion reached is thus stated in the concluding sentence of the opinion:

"We therefore *adopt*, though we admit *with some hesitation, the views of the State court*, which lead to an affirmance of the judgments."

Grounds on Which the Rehearing is Asked.

The petitioner respectfully asks a rehearing of the case on the following grounds:

1. The opinion of this court, affirming the judgment of the State Court, except so far as it quotes from the opinion

of the State Supreme Court in 174 Ill., is based on grounds not presented in the brief for defendant in error, and therefore, not considered in the briefs for plaintiff in error.

(1) This court holds that the provision of Section 6 of the charter of plaintiff in error, that "this act * * * shall be construed liberally in all courts for the purposes therein expressed," only applies to particular sections of the Act, and that it does not apply to the exemption provision in question—the immediately preceding section, Section 5—on the ground that the word "purposes" was synonymous with "the object" of the Act expressed in Section 2, and that Section 5 was not "in furtherance of" this "object."

First: This view of the provision was not presented in the opinion of the State Supreme Court, but, on the contrary, that court gave the wholly different construction to the provision, that it applied to *all* the provisions of the charter, including Section 5, but that the word "purposes" was synonymous with "intention," and that this intention must be *first* ascertained, and that the provision should only be applied in giving construction to the provision, *after* this "*intention*" had been thus ascertained.

This contention we showed in our brief was clearly erroneous, and would, in effect, nullify the provision.

Second: Nor was the construction given by this court to Section 6 presented in the brief of counsel for defendant in error. On the contrary, their sole contention was, that the construction given by the State Supreme Court was binding on this court for the reason that

"Provisions in the contract that the contract itself shall be construed, without reference to certain laws then in force, *are not such provisions as are within the protecting force*

of the Federal constitution, which prohibits a state from passing any law impairing the obligation of a contract." (Brief, 32.)

It will thus be seen that the plaintiff in error has had no opportunity to be heard against the construction given to Section 6 by this court, which, as will be more fully shown hereafter, was wholly different from, and in fact inconsistent with, the construction given to it both by the State Supreme Court and by counsel for defendant in error.

(2) The court holds that the decision of the State Court, giving the construction to the exemption provision which this court adopts, is entitled to "great weight" and should "exercise marked influence upon the question this court is called upon to decide," citing and quoting from *Wilson* v. *Standefer,* 184 U. S., 399, in support of this conclusion.

This view was nowhere presented in the brief of counsel for defendant in error, nor was the case which this court cites in support of it cited in their brief, and for that reason neither the case cited, nor the view which it is held to support, was considered in the briefs for plaintiff in error.

(3) The construction given in 174 Ill. to the words "said seminary" in the exemption provision, on the meaning given to which the entire question of construction of the exemption provision depends—that it refers to the "particular property" which it is assumed was mentioned in Section 2—the seminary buildings and grounds—was wholly abandoned in the brief for defendant in error, and the only claim made was that the word "seminary," as there used, was intended to have the wholly different meaning, "the *school established* in the City of Chicago" — "the *school* which the corporation is *maintaining*"—"the *school* of higher learning"—as dis-

tinguished from the mere seminary grounds and buildings, and *it was this new construction given to the provision which was discussed in our reply and there shown to be wholly untenable.*

2. The court is in error in holding that the provision of Section 6 of the charter, which provides that "this act" "shall be construed liberally in all courts," does not apply to the exemption provision (Section 5), and for that reason a rehearing should be granted.

(1) It is conceded in the opinion (see Point I, *infra*) that if Section 6 does apply to Section 5, this court's decision should be in favor of plaintiff in error.

(2) The provision in Section 6 is, that "*this Act*"—which manifestly means, and can only mean, *the whole* of the Act, not any particular part or section of it, but *all* of it, including Section 5—"shall be construed liberally in all courts for the purposes therein expressed." And in the opinion on file, this court expressly holds that Section 6 does apply to Section 4, which defines the powers of the board of directors. We insist (as shown more fully under Point I, *infra*) that there is no sound reason for this ruling, and that the distinction involved in the court's holding that Section 6 applies to Section 4, but not Section 5, is without foundation.

(3) The court's ruling on this point is in direct conflict with the ruling of the State Supreme Court, which expressly held that Section 6 did apply to Section 5, but, after making that ruling, nullified (as we showed in our former brief, and shall further point out again, *infra*) the effect of it, by construing the word "purposes" in Section 6 as synonymous with *intention*, and treating the language "the

purposes therein expressed," as refering to the *intention* of *each* provision.

This court's opinion on this point is also inconsistent with itself, for the reason that, in addition to giving its own reasons in support of its construction of Section 6, this court also quotes, and in effect adopts, the reasoning of the State Supreme Court, which gives to the provision a construction different from, and inconsistent with, that given to it by this court.

The reasons in support of the above grounds for rehearing are presented fully, *infra,* under Point I, for the reason that the questions to which they refer, and on which this court has ruled adversely to plaintiff in error, were not presented either by the opinions of the State Court or the brief for defendant in error, and were, therefore, not considered by us either in our briefs for defendant in error or in the oral argument.

3. The ruling of the court that, in the case before it, the decision of the State Supreme Court is entitled to "great weight," and should "exercise marked influence on the question" in this court, is erroneous.

(1) There is no sound basis in reason for this ruling, and it is in fact contrary to the clear meaning and manifest purpose of the provisions of the Constitution and the Judiciary Act, which confer on this court an appellate jurisdiction to review the final judgments of state courts, giving effect to laws claimed to be violative of the obligation of a contract.

(2) The court's ruling is not supported by the case cited in the opinion (*Wilson* v. *Standefer,* 184 U. S.), nor by any of the previous cases in this court on the same

subject, but, on the contrary, all of these cases are based on grounds and reasons which have no application to the case before court.

The reasons in support of the above grounds also are presented more fully, *infra*, under Point II, for the reason that the questions to which they refer and on which this court has ruled adversely were not presented either in the opinion of the State Court or in the brief for defendant in error, and were, therefore, not considered by us in the briefs for plaintiff in error or on the oral argument.

4. The reasoning of the opinion of the State Court in 174 Ill., which this court quotes and adopts as the sole basis of its decision, giving the same construction to the exemption provision which the State Court gave to it, is clearly erroneous, and results in giving to the words "said seminary" and "belonging to" in the provision a meaning which is wholly unreasonable and contrary to the manifest intention of the provision.

It is submitted, as is in effect conceded in the opinion of the court, that if the reasoning of the State Court's opinion —which is adopted and quoted by the court as the sole basis of its decision giving the same construction to the exemption provision which the State Court gave to it—is clearly erroneous, the grounds and reasons presented in support of the construction of plaintiff in error are such that it should be adopted by the court, and the judgment should therefore be reversed.

In any view, it is clear that if it is shown that the construction, given to the language of the provision by the State Court in its opinion, results in giving to it an unreasonable, and in fact absurd meaning, the construction should be rejected, and the judgment should, therefore, be reversed.

Aside from the ruling of the court considered *supra* and under Point II, *infra*,. that the decision of the State Court is entitled to "great weight," and should exercise marked influence upon the decision of the question this court is called upon to decide," the court in its opinion gives no reasons in support of the construction of the exemption provision it adopts (the construction given it by the State Court), or against the construction of the plaintiff in error, but bases its decision wholly on the reasoning of the opinion of the State Supreme Court from which it quotes.

Referring to the passage quoted from the State Court's opinion, which gives the entire reasoning of the opinion in support of its construction of the exemption provision, the court say:

"We think *there is force* in this reasoning and we *are disposed* to concur in the result arrived at,"

and the concluding language of the opinion is:

"We therefore adopt, though we admit with some hesitation, *the views of* the State Court which lead to an affirmance of the judgments."

(1) A fundamental ground, on which the entire reasoning of the State Court's opinion and also the opinion of this court is based, is, that the rules of strict construction as to exemption from taxation, which are stated at length in the State Court's opinion, should be applied in giving construction to the exemption provision.

As we have shown, *supra,* and under Point I, *infra,* this ruling involves holding, as held in the opinion of this court, that the express provision of Section 6, that "this *act* * * * should be *construed liberally in all courts* for the purposes therein expressed," does not apply to Section 5—the exemption provision.

We have contended, *supra*, that this ruling as to the meaning and application of Section 6 is erroneous, and if this position is sustained, it follows that the fundamental ground on which the entire reasoning, both of the opinion of the State Court and of the opinion of this court, rest, is taken away, and for that reason the construction based on it is erroneous and the judgment of the State Court should therefore be reversed.

(2) The entire reasoning of the State Court's opinion, on which its construction of the exemption provision adopted by this court is based, is quoted in the opinion of the court.

On reference to the language quoted, it will be seen that the ruling of the State Court, which narrows the exemption expressed in the broad general language of the provision to the partial exemption only of "the property *used in immediate connection with* the seminary," is based wholly on the words "said seminary" in Section 5, and the view that these words refer to "the particular *property*," which (as is assumed) is mentioned in Section 2 (the school buildings and grounds), and not to the incorporated institution.

The question, therefore, is: To what did the words "said seminary" in the exemption provision refer; to the *institution* incorporated by the act, or to the *place* where instruction was to be given—the school buildings and grounds?

Referring again to the language quoted from the State Court's opinion, it will be seen that the sole ground on which the State Court bases its construction of the provision is that, under the rule of strict construction, "if the language (of the provision) is *capable* of the broader *or* more restricted meaning, the latter *must* be adopted," and the opinion, therefore, holds, in effect, that although the word "seminary" indisputably refers to the incorporated institu-

tion in other parts of the act—(*a*) in the title, (*b*) in the corporate name, and (c) in Section 4—it is "capable of" a different meaning in Section 5—the meaning which it is assumed is given it in Section 2—the seminary grounds and buildings—and the word "belonging," is "capable of" a different meaning from its natural and ordinary meaning, that of *ownership* (153 Ill., 41), this different meaning of these words which gives to the provision the "more restricted meaning" "*must* be adopted."

It will be seen that this method of giving construction to the provision wholly eliminates any consideration of the question of the actual *intention* of the legislature. The necessary and logical result of giving this effect to the rule of strict construction is, that the question of the actual *intention* of the legislature is not only not involved, but is wholly aside from the question.

Hence, in the opinion in 174 Ill., quoted in the opinion of this court, the question of the actual *intention* of the legislature is not mentioned, or referred to, but, by the process of reasoning adopted, the rule of strict construction —giving it the effect which it is assumed it has—itself arbitrarily settles the question of construction.

So, in the majority opinion of this court, nothing is said as to the real question—the question as to the actual *intention* of the legislature in the language used.

Neither the opinion of the State Court, nor the opinion of this court, concludes that it was the *intention* of the legislature of Illinois, in the language used, to exempt only the seminary grounds and buildings, etc., but the reasoning and conclusion of the State Court's opinion (adopted by this court), is that, because the word "seminary" and the word "belonging" in Section 5 are "*capable* of a broader *or*

more restricted meaning, the latter *must* be adopted," and *therefore,* that the words "said seminary," as used in Section 5, refer to the seminary grounds and buildings, and not to the incorporated institution, mentioned in the title and other parts of the act.

The result also of giving this effect to the rule of strict construction is, not only to ignore the primary and fundamental question of the legislative intention as wholly aside from the question of construction, but all consideration of the context or other evidences of legislative intention, and thereby to decide the whole question of construction on the application of an arbitrary rule that because a word is "capable of" two meanings, the one broader and the other more restricted, "the *latter must be* adopted."

Hence, neither in the opinion of the State Court, nor in the majority opinion, is any reference made to any of the other provisions of the Act, in which the word "seminary" indisputably refers to the incorporated institution, nor to any of the other evidences that it was the legislative intention that it should have that meaning in Section 5 (the exemption provision) stated in our brief, and also forcibly presented in the dissenting opinion.

On the contrary, as we have seen, the opinion of the State Court, and as a consequence, the opinion of this court, which adopts its reasoning, are based solely on the assumed requirement of the rule of strict construction that, as the words "seminary" and "belonging" are "capable of" the two meanings, the one which is the more restricted "*must* be" adopted, and that *therefore,* the words "said seminary" should be construed as referring to the seminary grounds and buildings, and not to the incorporated institution.

It is submitted that this assumption of the State Court

as to the meaning of the rule of strict construction is wholly erroneous.

The authorities are uniform that the rule of strict construction which was applied does not in any way change or override the fundamental rule that the primary inquiry, in giving construction to language of a statute or a contract, is as to the *intention* of the legislature in using the language it did, nor the other and familiar and well-settled rule that where a word has two meanings, the natural and ordinary meaning should be adopted, in the absence of other provisions showing a contrary intention. (Brief, 87-89.)

U. S. v. *Hartwell*, 6 Wall., 385.
Meadowcroft v. *People*, 156 Ill., 356.

This fundamental error in the reasoning of the opinion of the State Supreme Court is nowhere considered in this court's opinion, but, on the contrary, the court itself falls into the same error by adopting, as the basis of its decision, the entire reasoning of the State Court's opinion.

(3) In our brief and argument (Brief, 51-67; Reply, 31-42) we have referred to the different provisions of the Act in which the word "seminary" is used in the sense in which we claim it was used in Section 5—as referring to the incorporated institution—and have stated different reasons, based on the particular language of the provision, the context and purpose of the Act, etc., as showing that it was the intention of the legislature, in using the words "said seminary" in the exemption provision, to refer to the incorporated institution.

The reasons in support of this view of the legislative intention are also forcibly and clearly stated in the dissenting

opinion of Mr. Justice WHITE, concurred in by Mr. Justice BROWN and Mr. Justice HOLMES.

None of these reasons are considered in the State Court's opinion or in the opinion of this court, which is based, as we have seen, wholly on the reasoning of that opinion.

On the contrary, there is no mention in either opinion of any of the different provisions in which the word "seminary" is indisputably used in the sense of the incorporated institution—in the title of the Act, in the corporate name and Section 4. There is no reference to any of the other provisions or the context relied on by us as showing that such was the legislative intention. No one of the reasons stated in support of the construction of plaintiff in error is even mentioned.

The other provisions of the Act, the context and the reasons in support of the construction of plaintiff in error, if present at all in the mind of the State Supreme Court, are wholly ignored by it, and the opinion proceeds wholly on the ground, as we have shown, that if the word "seminary," as used in Section 5, is "capable of" two meanings, the more restricted should be given to it, and therefore the words "said seminary," as used in Section 5, should be construed as referring to the seminary buildings and grounds, and not the incorporated institution.

We can only explain the entire absence of any reference to these reasons in the opinion of this court by the fact that, as the result of its ruling that "great weight" should be given to the State Court decision—that it should "exercise a marked influence on the question"—the court bases its decision affirming the judgment of the State Court on the view expressed that there is "much *force in the reasoning*" of the State Court's opinion—that its decision "is not *in itself*

unreasonable or in violation of the plain language of the statute"—and therefore its conclusion should be adopted.

(4) We have shown in our brief that if the meaning is given to the words "said seminary" and "belonging to" in the exemption provision which the State Supreme Court found it necessary to give to them to reach the conclusion it did in its opinion in 174 Ill. (the reasoning of which this court adopts), the result is that the provision is given a wholly unreasonable and, in fact, an absurd meaning. (Brief, 69-73.)

We have there shown that the State Supreme Court, in its opinion in 174 Ill., expressly gave to the words "said seminary" the meaning the "particular property," which (as it assumed) was "mentioned" in the preceding Section 2, as "the seminary"—the seminary buildings and grounds—and to the word "belonging" the meaning (using the language of the definition quoted and adopted in the opinion) "*connected with* a *principal* or *greater* thing; an *appendage;* an *appurtenance.*"

We have also shown that, substituting for the words used in Section 5, "said seminary" and "belonging to," the words which the State Supreme Court held expressed the meaning it was intended they should have, *only* the particular property "*connected with* the *principal* or *greater* thing—"appertaining *to*" "the particular property" (the seminary grounds and buildings) would be exempt.

The effect, therefore, of giving to the words "seminary" and "belonging" the meaning given them by the State Supreme Court is that "the *principal* or *greater* thing," "the particular *property*" referred to as "*said* seminary"—the seminary buildings and grounds—"with" which the property exempt is defined as "*connected*" as an "*appurtenance,*"

would not be exempt, but, on the contrary, would be *excluded from the exemption by the very language of the provision.*

We have also shown that, giving to the language of the provision the meaning thus given it by the State Supreme Court, would not only result in not exempting the very property which the State Supreme Court and this court held it was *intended to exempt*—the seminary grounds and buildings—but would also attribute to the legislature an absurd and unreasonable meaning which never could have been intended. See

Lau Ow Bew v. *U. S.*, 144 U. S., 47, 59.
People ex rel. Gaulter, 14 Ill., 39.

This view of the effect of the State Supreme Court's decision, from which we submit there is no escape, is also wholly unanswered in the opinion of this court or in the brief for defendant in error.

(5) We have also shown in our brief and argument that the decision of the State Supreme Court in both the cases before the court is based on a *construction of* its previous decision in 174 Ill., which gives to the exemption provision a meaning *wholly different from that given it by the same court in its opinion in* 171 *Ill., and one which it is impossible to derive from the words of the provision.* (Brief, 73-75.)

In No. 140 the court, referring to 174 Ill., 177, say (Pr. Rec., 54):

"In the latter case, 174 Ill., we hold that Sec. 5 of the Act of 1855, incorporating the appellant, * * * refers only to *property used in immediate connection with the seminary, and does not include other property* which may be owned, rented or held by the said seminary as an investment, *even though the income thereof is used solely for school purposes.* We are satisfied with the conclusions reached in *People* v. *Theological Seminary, supra.*"

The same *construction* of the decision in 174 Ill. is given in the opinion of the State Court in No. 265, and is in turn adopted by the court in its opinion.

We have shown in our brief (pp. 74-75) that, substituting for the words *actually* used in Section 5, the words which the State Court says in its opinions in the two cases before the court, express the meaning intended to be given them by the opinion in 174 Ill., the result is an *entirely new provision*, which it is impossible by any distortion of language to derive from the original Section 5, and which is wholly inconsistent with the meaning which the same court in its opinion in 174 Ill. gave the *language* of the provision.

We have also there shown, as illustrating this, that under the construction given by the State Supreme Court to the opinion in 174 Ill., in its opinions in the two cases before the court (and also in this court's opinion) the words "belonging or appertaining to" in the exemption provision are given the meaning "used in immediate connection with," a meaning which they do not have either in the definition adopted in 174 Ill. or in any definition given by any lexicographer,

This view of the construction given to the provision by the State Supreme Court, and which, we submit, demonstrates the error of that construction, is also wholly unanswered, either in the opinion of this court or in the brief for defendant in error.

(6) It is not controverted in the opinion of the State Court or in the opinion of this court, that in construing a statute the words used are to be given their primary and ordinary meaning unless it appears from other provisions that a different meaning was intended, and that if the

word "belong" in the exemption provision meant ownership, it is indisputable that the words "said seminary" referred to the incorporated institution.

In *Gammon* v. *Gammon,* 153 Ill., 41, cited in our original brief, the Supreme Court of Illinois expressly held that the primary and ordinary meaning of the word "belong" is that of ownership.

In the following cases cited in our original brief, the word "belong," occurring in a provision of exemption substantially the same as the provision in question, was held to mean ownership, and the corresponding words "seminary," "institution" and "asylum" were held to mean the institution incorporated by the act. (Brief, 65-69; 56.)

County of Nobles v. *Hamline University,* 46 Minn., 316.

Asylum v. *New Orleans,* 105 U. S., 362.

President & Faculty of St. Vincent's College v. *Schaeffer,* 104 Mo., 261.

See, also, to the same effect:

University v. *Skidmore,* 87 Tenn., 156.

Humphries v. *Little Sisters of the Poor,* 29 Oh. St., 201.

We have also shown in our original brief that in a number of other like charters, passed by the same legislature—one at the previous session and two at the same session—there were exemption provisions in the identical language, including the words "*belonging* or appertaining to," in which the word "belonging" was unmistakably used in the sense of *ownership.* (Brief, p. 95, Appendix, pp. 5-7.)

Where in the act does the court find the evidence of the legislative intention to give to the word "belonging," in the

provision "the *property*, etc., *belonging* or appertaining to said seminary," a different meaning as applied to property from its primary and ordinary meaning—that of *ownership*?

Neither in the opinion of the State Court nor in the opinion of this court, nor in the brief of counsel for defendant in error is any language or provision of the act referred to as showing an intention that the word should be given a meaning so wholly different from this ordinary meaning which it was held to have in substantially the same exemption provision in the five different cases cited, and which it indisputably had in the other charters referred to.

It follows that the primary and natural meaning of the word "belong" being that of *ownership*, and there being nothing in the Act showing that a contrary meaning was intended, this of itself shows that "*said* seminary" referred to the educational institution, which it was the express object of the Act to incorporate and which was the only entity capable of owning property mentioned in the act.

(7) We cited in our original brief the following adjudicated cases, in which like provisions were considered and it was held on grounds peculiarly pertinent to the cases before the court, that similar general words "belong to" and "the college," "the institution," "the asylum," etc., referred to the corporation created by the Act, and that all the property of the corporation was, therefore, exempt (Br., pp. 65-73):

Asylum v. *New Orleans*, 105 U. S., 362.

Nobles v. *Hamline University*, 46 Minn., 316.

President, etc., of St. Vincent's College v. *Schaefer*, 104 Mo., 261.

We also quoted at length from the two cases of *Asylum* v. *New Orleans,* 105 U. S., 362, and *County of Nobles* v. *Hamline University,* 46 Minn., 316, in both of which the exemption provisions were practically *identical in language* with the provision in question, except that in *Asylum* v. *New Orleans,* the words used were "the Asylum," and in *County of Nobles* v. *Hamline University,* "the institution," instead of "said seminary."

In *Asylum* v. *New Orleans* (105 U. S., 362), the exemption provision was as follows:

"That from and after the passage of this Act all the property, real and personal *belonging* to the Orphan Boys' *Asylum* of New Orleans, be and the same is hereby exempted from all taxes, either by the state, parish or city in which it is situated, any law to the contrary notwithstanding."

It thus appears that in the exemption provision in that case, there was the same use of the general word "asylum" which could refer to the incorporated institution, but was "capable of" a meaning which would refer to the "place," the "building and grounds," also known as the asylum, and of the word "belonging" which, in addition to its primary meaning, *ownership,* was *"capable* of" the different meaning, "connected with," etc., given to it in the opinion of the State Supreme Court.

The precise and only reasoning on which, as we have shown, the State Supreme Court based its decision giving to the provision in question the narrow and restricted meaning which it did, therefore applied to the exemption provision in that case.

The property on which the tax was levied was a cotton press owned by the corporation the income from which was applied to maintain the charity. The precise question

of construction involved in the cases before the court was thus directly presented, and was, in fact, expressly passed on in the case.

The court, Mr. Justice BRADLEY, say (pp. 365, 369):

"The language of the exemption is *so explicit and so broad* and comes in after so many allusions to property which it is supposed the corporation might acquire other than that which would be directly used for food and shelter to the destitute and helpless persons under its care, *that no doubt can be entertained as to its literal application to all the property of the Society which it would be lawful and proper for it to possess.* The funds on which it relies for carrying on its work, however invested, whether in stocks, real estate or otherwise, *less than the asylum building itself, are clearly embraced in the terms of the exemption, and to exclude them from its operation, would require the insertion or addition of words which the legislature did not see fit to express.* * * * *We think it difficult to conceive of a grant more clearly expressed than that in the present case.*"

It is true, that, in that case, the State Supreme Court did not base its decision on the ground of a construction of the exemption, but on the ground that under its construction of a general law of the state in force at the time the charter was adopted, there was a power reserved to the legislature to withdraw the exemption.

It appears, however, from the opinion, that the question of the proper construction of the exemption—whether it exempted *all* of the property of the corporation—was raised in this court and directly passed on by it.

There is, therefore, no ground for distinguishing the case from the case before the court, unless under the ruling of the court that on writ of error to review a judgment of a State Court the decision of the State Court is entitled to "great weight," etc., the decision of the State Court is held

to be controlling or not on the question of construction, according as it does—or does not—pass on that question.

In the *County of Nobles* v. *Hamline University,* the act was entitled "An Act to *incorporate* the Hamline University of Minnesota." The exemption provision, Section 11, provided:

"All corporate property *belonging to the institution,* both real and personal, is and shall be free from taxation."

Section 13 of the Act, which was identical with Section 6 of the Act in question, provided:

"This Act shall be *construed liberally in all courts* for the purposes herein expressed."

There was, therefore, in that case, the same use in the exemption provision of a general term "the institution" instead of the corporate name, and of the same words, "belonging to."

It was contended in that case, as in this, that the words "the institution" in the exemption provision, referred to the place and not to the corporation, and that, therefore, the exemption was limited to property directly used and occupied by the University.

The entire reasoning of the Supreme Court of Minnesota in holding that all the property of the corporation was exempt from taxation under the provision (pp. 317, 318) which is quoted in our brief, page 67, is peculiarly pertinent to the case before the court.

The court, in conclusion, say:

"*The institution* as distinguished from the corporation HAS NO BEING AND IS NOT CAPABLE OF OWNING PROPERTY. Had it been intended to limit the exemption to property directly used and occupied by the University DIFFERENT LANGUAGE WOULD HAVE BEEN USED."

Neither of these cases is distinguished or otherwise referred to in this court's opinion.

Not only this, but the absence of any reference to these cases in the opinion is emphasized by the fact that the court refers to and distinguishes the case of *University* v. *People*, 99 U. S., which *was not cited by us* on the question of construction, but *only on the question of jurisdiction*, saying:

"The case of *University* v. *People*, 99 U. S., 309, *is no authority for the construction contended for by the plaintiff in error.*"

The court then points out the difference between the language used in the exemption provision in that case and in the case before the court.

In fact, the case was cited by counsel for defendant in error, and in our reply brief, we showed that the provision in question in the particular case was an *amendment to the original charter*, and that for that reason the form of phrase used in the charter of plaintiff in error which was used by the same legislature in so many other charters (see appendix) to express a *total* exemption as in the charter in in question, the words "said seminary," "*said* institution," etc., was not appropriate. (Reply, p. 44.)

(8.) We also showed, in our original brief, that the construction of plaintiff in error was further decisively confirmed by the consideration of other similar charters passed by the same legislature at the same and other sessions. (Brief, p. 90-97; Reply, 44.)

That under the authorities cited by us these provisions in other charters passed by the same legislature at the same, and other sessions could properly be referred to as confirming our construction of the provision in question, is not controverted, either in the brief of counsel for defend-

ant in error or in the court's opinion. Nor is the reasoning by which it is shown that a reference to these provisions forcibly confirms our construction of the exemption provisions before the court anywhere controverted.

We submit the following reasons in support of the particular grounds above stated—which were not considered in the briefs filed by us, for the reason that they were not presented either in the opinion of the State Supreme Court or in the brief for defendant in error.

I.

THE COURT IS IN ERROR IN HOLDING THAT THE PROVISION OF SECTION 6 OF THE CHARTER, WHICH PROVIDES THAT "THIS ACT," "SHALL BE CONSTRUED LIBERALLY IN ALL COURTS," DOES NOT APPLY TO THE EXEMPTION PROVISION (SECTION 5), AND FOR THAT REASON A REHEARING SHOULD BE GRANTED.

Section 6 of the Act provides:

"Sec. 6. *This Act* to take effect and be in force from and after its passage, and *it* shall be deemed a public act *and shall be construed liberally in all courts,* for the purposes therein expressed."

If this provision applies to the exemption provision in question, Section 5, and for that reason the provision should be "*construed liberally in all courts,*" the entire fabric of the reasoning of the majority opinion, as well as of the opinion of the State Supreme Court, falls to the ground.

The entire reasoning of the majority opinion is based on the view that the rule of strict construction applies to the provision—that "a doubt is fatal to the claim"—and that because of this rule, as there is "room for *reasonable doubt*

whether a total or only a partial exemption was meant, a partial exemption should alone be recognized."

That if the provision of Section 6 should be applied, a different conclusion would follow in giving construction to the exemption provision (Section 5), is in effect conceded.

Referring to Section 4, the provision which defines the powers of the board of directors, and to which the opinion holds the provision of Section 6 applies, this language is used:

"Those powers (the powers given by Section 4) should be *liberally* construed *for the furtherance of the object stated in the charter. To do so would not violate any well-settled rule of construction,* and would nevertheless *be sufficient in case of doubt to turn the decision in favor of a construction more liberal in its nature than might otherwise be properly adopted.*"

It will be observed that by the express language of Section 6, "*it*"—"this *act*"—and not particular provisions of it, is to be "*construed liberally in all courts for the purposes therein expressed.*"

Referring to this provision the court say:

"The word 'purposes' in Section 6, is synonymous with the word 'object' in Section 2, as we think, and we find that the object or purpose is stated in Section 2, 'to furnish instruction and a means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose.' It is *for the accomplishment of* this purpose or object that the *act* is to be liberally construed."

Referring to Section 4 (the section immediately preceding the provision in question), which defines the powers of the board of directors, the court say:

"In regard to the powers of the board of directors, as provided for in the charter, those powers should be liberally

construed *for the furtherance of the object stated* in the charter. To do so *would not violate any well-settled rule of construction,* and would, nevertheless, be sufficient in case of doubt to turn the decision in favor of a construction *more liberal* in its nature than might otherwise be properly adopted."

The opinion further holds that this Section, which it is thus expressly held should apply in giving construction to Section 4, should not be applied in giving construction to the immediately following section (Section 5), the exemption provision in question.

If, because of this express provision of Section 6, which, as we have seen, applies in terms to the entire "Act," and not to any particular provision of it, Section 4 is to be "liberally construed," "for the furtherance of the object stated in the charter," why should not Section 5 be so construed for the same purpose?

The language of Section 6 is not that Section 4, or any particular provision, shall be "liberally construed," but that "this *Act*," not any one provision of it, but all of its provisions, shall be "construed liberally in all courts."

The court holds that the "purposes therein expressed," for the furtherance of which the "act" is to be "liberally construed," are synonymous with the word "object" in Section 2—"to furnish instruction and *the means of* education to young men preparing for the gospel ministry," and that "it is *for the accomplishment of this purpose or object* that the act is to be liberally construed."

Basing its ruling on this construction of the language, the court holds that under the provision in question (Section 6), Section 4, which defines the powers of the board of directors, "should be *liberally construed,*" because the powers

granted by it are to be exercised "for the furtherance of the object stated in the charter."

On the other hand, the court holds, in effect, that the immediately following section (Section 5), which grants the exemption from taxation, is not within the provision of Section 6, for the reason that it is *not* "for the furtherance of the object stated in the charter."

On what theory is it held that a provision granting and defining the powers of a board of directors is "for the furtherance of the object stated in the charter,"—"for the accomplishment of this purpose or object"—and the provision exempting from taxation the property of the corporation, which could only be acquired, held or used to carry out and promote that object, is not?

On what theory is it held that a provision that the board of directors "shall have power" "to appoint an executive committee" and "such officers, professors and teachers as the government and instruction of the seminary may require," is a provision "for the furtherance of the object stated in the charter," and a provision exempting from taxation the property which, under the charter, could only be acquired by the donations, or proceeds of donations, made to promote the object of the corporation, and could only be held or used to promote that object, is not?

It is expressly stipulated in the cases before the court, as to all the property on which the taxes in question were levied, that "all the rentals and income" of the property are "used *for the object contemplated in the charter,*" and that "all said parcels and lots were bought by the objector, or given to the objector, *for the promotion of the object mentioned in the charter.*" (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 20.)

Does the exercise by the board of directors of power to appoint agents, professors, teachers, etc., promote the object stated—"to furnish instruction and the *means of* education"—any more directly than does the exemption from taxation of the property donated to the corporation for the sole purpose of promoting that object, and the income or proceeds of which is used, and can only be used, to pay the officers, teachers, professors, and otherwise aid in "furnishing *instruction* and the *means of* education?"

In *Home of the Friendless* v. *Rouse,* 8 Wall., 430, the court, referring to the effect of an exemption provision in the charter of the Home of the Friendless, Mr. Justice DAVIS delivering the opinion, say:

"The purposes to be attained by such a charity are usually beyond the ability of individual effort, and require an association of persons who will themselves contribute pecuniary aid, and are willing to become solicitors for the contributions of others. Usually the initiation of such an enterprise is in the hands of a few persons who need to be clothed with more than ordinary powers in order to obtain the successful co-operation of others. IN NO WAY COULD THIS CO-OPERATION BE BETTER SECURED *than by conferring on the corporators the authority to say to the benevolent people of St. Louis that their donations in money or lands, for the relief of the suffering female poor of the city, would be held by the institution undiminished by taxation.*"

In *Washington University* v. *Rouse,* 8 Wall., 439, argued and decided at the same time with the *Home of the Friendless* v. *Rouse, supra,* the court, referring to a like provision of exemption in the charter of the University (Mr. Justice DAVIS delivering the opinion), said (pp. 439, 440):

"There are *no material points of difference* between the case just decided and this case, and the views presented in that case *are applicable to* this. The *object* of the charter in the one was to promote a charity, in the other *to en-*

courage learning. Both were public objects of advantage to the country, and which every government is desirous of promoting."

Another apparent ground of distinction made by the court is that to apply the provision to Section 5 would be to give it the effect of changing "a canon of construction" which would otherwise apply to the provision—the rule of strict construction—and that such could not have been the intention of the legislature.

In holding that the provision applies to Section 4, the provision defining the powers of the board of directors, the opinion gives as the reason that "to do so *would not violate any well settled rule of construction.*"

In holding that the provision does not apply to the immediately following section, the one in question (Section 5), the court say:

"We do not think it was intended by the language of the sixth section to provide for a complete overthrow *of a canon of construction,* such as the one in question, which has obtained for so many years, and has been so universally and strictly adopted and adhered to by the courts of the whole country."

In other words, the reasoning of the opinion is, in effect, that the provision of Section 6, which, by its express language, applies to the entire "Act,"—which provides that "it" ("this *Act*") "shall be construed liberally in all courts," should be held not to apply to any provision which, in the absence of Section 6, *would be subject to the rule of strict construction.*

The effect of the ruling is that, there being these two opposing rules of construction—a rule of *liberal* construction and a rule of *strict* construction—the provision should not be applied to any section which, in the absence of an express

provision on the subject, would be subject to the established rule of strict construction.

This necessarily follows since, if, in the absence of Section 6, Section 4 would be subject to the rule of strict construction, which is as old as the law, there would be the same reason for not applying Section 6,—that to do so would "provide for a complete overthrow of a canon of construction, such as the one in question," that of strict construction.

If the provision of Section 6 as to the rule of construction to be applied was not intended to change some existing rule of construction which would otherwise apply, why was it inserted?

If it was intended that this provision should be limited to particular sections—should apply in giving construction to Section 4 and not in giving construction to the immediately following section (Section 5), why was it not so limited in terms?

If the provision of Section 6 applies to the provision of Section 4, granting and defining the powers of the board of directors, what reason can be suggested why it should not apply to the grant of power in Section 1, "to acquire, hold and have property, real and personal, etc."?

If this Section 6, which in terms applies to "this Act," applies to the grants contained in these different provisions, why should it not apply to the grant of exemption from taxation in Section 5? If it was intended to apply to all the other provisions of the Act except Section 5, as the opinion in effect holds, why was the general language, "this Act," used? Why was no exception made of this one particular section, to which it is held the provision does not apply?

In the opinion, the fact that the rule of strict construction,

which applies to exemptions from taxation, "has obtained for so many years, and has been so universally and strictly adopted and adhered to by the courts of the whole country," seems to be also regarded as a further reason why Section 6, notwithstanding its express language, should be held not to apply to Section 5.

(1) It is submitted that, if the fact that to apply Section 6 to the exemption provision would be "a complete overthrow of a canon of construction," as applied to the particular provision, is not a sufficient reason for limiting its plain language, the further fact that the rule "has obtained for so many years," or "has been universally adopted," clearly would not be.

(2) The provisions of the charter under consideration were adopted nearly fifty years ago, and the present condition of the law, which has largely grown up during that period, can afford no possible aid in arriving at their true construction.

(3) We submit that as applied to charitable corporations, which include educational institutions, as distinguished from corporations for profit, the rule of strict construction as to exemptions from taxation has not been "so universally and strictly adopted and adhered to by the courts of the whole country."

This is shown by the many cases cited in our brief (pp. 76-81), which hold that the reasons of the rule have no application to exemptions from taxation in the charters of charitable corporations, and that therefore the provisions in such charters should be liberally construed to further the charitable objects intended.

It may be that the very purpose of the provision was to settle the question which these authorities show might other-

wise have arisen, as to the rule of construction to be applied.

The provision is also to be read in the light of the settled policy of the state at the time the charter was passed and up to the time of the adoption of the new constitution of 1870, to favor and promote educational and other charitable institutions by liberal grants of exemption from taxation, as shown both by the provision of the constitution then in force and the many grants of similar exemptions from taxation to such institutions.

The statutes of the different states also show that such provisions, providing as to the rule of construction to be given to statutes, or particular statutes, are not uncommon in legislation, and that where they are adopted it is for the very purpose of changing some existing "canon of construction," which would otherwise be applied. In fact, they could have no other object.

See,

Commonwealth v. *Davis,* 12 Bush (Ky.), 240.
People v. *Soto,* 49 Cal., 67.
Hankins v. *People,* 106 Ill., 628.
Maxwell v. *People,* 158 Ill., 248.

The court, in connection with its consideration of Section 6, also quotes the language of the Supreme Court of Illinois in giving construction to the same provision.

On reference, however, to the language quoted, it will be seen that the Supreme Court of Illinois gives to the provision of Section 6 *a construction wholly different from and inconsistent with that adopted by the majority opinion.*

The Supreme Court of Illinois, after quoting the language of Section 6, say:

"We do not think this language was intended to or could

be held to change or qualify the general rules of construction applicable to the section under consideration.

Here the very question to be determined is, what is the *purpose* expressed in the section? And to say that liberal rules of construction must, under Section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt, would be to beg the whole question. In determining what *purpose* is expressed in the section, resort must necessarily be had to the general rules for considering such laws. When that *purpose* is ascertained, liberal rules of construction, *if necessary,* are resorted to *to give effect to such purpose."*

It will be seen that the Supreme Court of Illinois here treats the provision of Section 6 *as applying in the same way to Section 5 as to any other provision of the charter,* and its ruling is therefore in direct conflict with the ruling of the majority opinion, that while this provision should be applied in giving construction to Sections 2 and 4, it *should not* be applied in giving construction to Section 5.

While, however, the Supreme Court of Illinois holds that the provision applies to Section 5 the same as to any other section, that court gives it a meaning which, as we have shown in our brief (pp. 83-85), wholly nullifies it by construing the word "purposes" in Section 6 as synonymous with *intention,* and treating the language, "the *purposes* therein expressed," as referring to the *intention* of *each* provision.

If Section 6 applies only after each *provision* has been construed, and the *purpose, i. e.,* the *intention,* has been ascertained by construction, what is there remaining to construe?

Take the provision in question (Section 5). If the rule of strict construction is to be *first applied* for the purpose of ascertaining its *intention,* for what *other purpose* can it be "construed liberally in all courts?"

There is no room for applying rules of construction except in ascertaining the *intention* of the provision, and when the *intention* is ascertained, there is no further occasion for construction.

In conclusion on this point, we quote the language of the dissenting opinion of Mr. Justice WHITE (concurred in by Mr. Justice BROWN and Mr. Justice HOLMES):

"I cannot conceive that the words of the statute, immediately following the section granting the exemption, commanding that the provisions of the contract 'shall be liberally construed in all courts for the purposes therein expressed,' should have what seems to me their plain meaning disregarded, by causing them to refer, not to the act as a whole, but to some particular provision in it. I find nothing in the language which lends itself to such a view."

II.

THE RULING OF THE COURT THAT IN THE CASES BEFORE IT THE DECISION OF THE STATE SUPREME COURT IS ENTITLED TO GREAT WEIGHT, AND SHOULD EXERCISE A MARKED INFLUENCE ON THE QUESTION IN THIS COURT, IS ERRONEOUS.

We shall consider this ruling (1) on reason and (2) on authority.

1. *There is no sound basis in reason for this ruling, and it is in fact contrary to the clear meaning and manifest purpose of the provisions of the Constitution and Judiciary Act, which confer on this court an appellate jurisdiction to review the final judgment of state courts giving effect to laws claimed to be violative of the obligation of a contract.*

The opinion of the court concedes that the exemption provision in the charter of plaintiff in error constitutes a contract between the State of Illinois and the plaintiff in error.

The sole question to be determined by the court is as to the proper *construction* of the particular charter provision.

If it is construed as granting a *total* exemption from taxation, the obligation of the contract is admittedly violated by the subsequent state law.

It has been decided in many cases that, in passing on the question of construction in such a case, this court must decide the question for itself, in the exercise of an independent judgment, and without reference to the decision made by the state court.

State Bank of Ohio v. *Knoop*, 16 How., 369.
Ohio Life Ins. & Trust Co. v. *Debolt*, 16 How., 41.
Jefferson Branch Bank v. *Skelley*, 1 Black, 43.
Delmas v. *Ins. Co.*, 14 Wall., 660.
Louisville Gas Co. v. *Citizens Gas Co.*, 115 U. S., 83.
Bryan v. *Board of Education*, 151 U. S., 39, 50.
Mobile & Ohio R. R. Co. v. *Tennessee*, 153 U. S., 48.
Douglass v. *Kentucky*, 168 U. S., 489.
Chicago, etc., R. R. Co. v. *Nebraska*, 170 U. S., 57.

We submit that to hold that the mere fact that *the very decision* of the state court, *which the court is reviewing in the exercise of its appellate jurisdiction*, was a particular way is entitled to "*great weight*," and should "exercise a *marked influence* upon the question," is in direct contradiction of the many clear and emphatic statements of the rule which this court has so many times held should govern in this class of cases.

It is a contradiction in terms to say that "great weight" should be attached to the mere fact that the decision of the state court was a particular way, and that because of this fact such decision "should exercise *a marked influence* on the question" in this court, and at the same time to say that it is the duty of the court to decide the question before it for decision "*independently of all adjudication* of the Supreme Court of the state" (1 Black, 436); "*to interpret for itself* the instrument relied on as the contract between the parties" (16 How., 416); "to decide *for ourselves, independently of the decision of the state court*" (109 U. S., 244); "*whatever may be the views or decisions of the state court in relation thereto*" (135 U. S., 662); "*upon our own judgment and independently of the adjudication of the state court*" (115 U. S., 683).

The sole question before the court is the question as to the proper construction of the exemption provision.

Under the many decisions of this court, cited *supra*, it is the duty of this court, exercising as it does an appellate and revisory jurisdiction, to decide this question for itself, and in the exercise of its independent judgment, and without reference to the decision made by the State Court, whose judgment is before it for review.

By the ruling of the court under consideration, there is added to the real, and, as we contend, the only, question involved—what, in the opinion of this court, in the exercise of its own independent judgment, was the legislative intention in the language used—the further question, whether *the decision of the State Court* "is *in itself* unreasonable, or in violation of the plain language of the statute."

Unless, in particular cases, a determining and controlling effect is to be given to the determination, by this court, of

this further and additional question as to whether *the State Court's decision* is "*in itself* unreasonable or in violation of the plain language of the statute," the consideration and determination of this question would be wholly meaningless.

On the other hand, if the determination of this question would be controlling in particular cases (as it necessarily must be in order to be material), it is submitted that the effect is *to introduce a wholly new test for determining whether the judgment of the State Court is erroneous, and one which is wholly inconsistent with the nature of the revisory jurisdiction vested in the court, and the duty imposed on it in the exercise of that jurisdiction.*

The question of construction involved in the cases before the court is the same question which would be before the court if the case was an appeal from a decree or judgment of a Federal Circuit Court or Court of Appeals, in a suit to prevent the threatened violation of the obligation of the contract by the enforcement of the tax levy or to recover back the amount of the tax paid, on the ground that the particular property was exempt from taxation under this provision, and in which the Federal court had based its decision on the same ground of construction—that the exemption provision did not cover the particular property.

In such a case, however, there could be no claim that any weight should be given by this court to the fact that the decision of the question by the Federal Court was a particular way.

In no view would the decision of that court have "great weight" or "exercise a marked influence on the decision of the question," or in any way affect or influence the decision

of the question by this court, except as the reasoning of the opinion of the lower court would be entitled to consideration.

The ruling of the majority opinion, therefore, presents this anomaly, that in case of a review of a decision by the Federal Circuit Court, or Court of Appeals, *of the same question of construction* of the particular provision, this court might decide the question of construction in favor of plaintiff in error —might give a favorable construction to the charter provision —with the same reasons and considerations for and against the construction before it, while in case of a writ of error to review the decision of the state court, because of the "great weight," the "marked influence" which it holds the decision of that court is entitled to, it would decide the same question of construction the other way.

In other words, *the mere fact that the writ of error is to review the judgment of the state Supreme Court, instead of the judgment of the Federal court, might be controlling in the particular case,* and therefore lead to a different and, in fact, opposite decision from that which would be rendered if the appeal was from the same judgment by the Federal court.

It follows that the effect of the ruling of the opinion is that the same question of construction, between the same parties, on the same arguments for and against the particular construction, would be decided by this court in the exercise of its independent judgment one way—in favor of the exemption—and another way—against the exemption—according as the revisory jurisdiction of this court should be invoked to review a judgment by the Federal court or to review a judgment of the State Supreme Court.

If "great weight" is to be given to the decision of the state court, if it is to have a "marked influence on the decision of the question," as the court holds, it follows that in a particu-

lar case this "great weight," this "marked influence," might turn the scale against the exemption claimed (and such in effect is the reasoning of the majority opinion), and there would, therefore, be a wholly different decision of the same question of construction by this court, in the exercise of its independent judgment, according as the court should be called upon to determine it on writ of error to review the judgment of a state court or on writ of error to review the decree or judgment of a Federal court.

Unless such would be its effect in a given case, the holding that this "great weight" should be given to the state court's decision, this "marked influence" should be exercised by it in the consideration of the question in this court, would be wholly foreign to the question before the court, and all that part of the opinion in which so much is said on the subject would be words and not substance.

We also submit that there is a manifest inconsistency between the position of the court in this case and the provisions of the federal constitution and the federal statutes with reference to the jurisdiction of Federal courts over cases involving federal questions.

If, as the court holds, the decision of the state court with reference to such a federal question as is here involved is to be given "great weight" by this court—"is entitled to exercise *marked influence* on the question"—then the constitution and the statutes ought to provide that such questions should be *first determined by the state courts* instead of providing, as they do, that the existence of such federal questions shall be ground for *original* jurisdiction in the Federal courts, or give a right to remove the case from the state to the Federal court.

To make the position of the court consistent and to avoid absurd results, the Federal Circuit Courts ought to be closed to litigants in such cases. As it is, the Federal courts being open to parties relying upon the contract clause of the constitution, the result of the rule adopted by this court will be to compel parties whose contracts are with a state, and who desire to have the question of their impairment passed upon by this court, *unaffected by a decision of the courts of the very state with which the contracts were made, to so shape their cases that they may appear as plaintiffs in the Federal courts in the first instance.*

It is evident that, in the case of federal questions, whether the case comes on appeal from the state court or from the Federal Circuit Court is largely a matter of accident. In either case the right and duty of this court in the exercise of its appellate jurisdiction must be the same. In fact, the position taken in the opinion can mean only this: that the question of the construction of a contract with a state, in the form of a legislative grant, does not in reality present a question primarily *federal* in character. And for that reason the present decision is fundamentally inconsistent with the earlier cases.

Again, this further anomaly is presented by the ruling of the majority opinion.

The same constitutional and statutory provisions which give this court power to review the judgment of a state court sustaining a state law, claimed to be violative of a contract between an individual and the state, give it power to review cases in which the state law is claimed to be violative of a contract between two individuals.

The jurisdiction in both cases is given by the same general language of the Federal Constitution, and of the Judiciary Act.

Suppose that, in a case in which it was claimed that the state law violated the obligation of a contract between two individuals, the State Supreme Court should base its decision sustaining the law on a *construction* of the particular contract, there is no possible view in which, on a writ of error to review the judgment in this court, "great weight" would be given to the decision of the state court—a "marked influence on the decision of the question" would be exercised by it,—but the court would determine the question for itself, wholly uninfluenced by the particular decision of the State Supreme Court.

Suppose, on the other hand, that the same question of *construction, on the same language* (as might happen), arose on a contract between the state and an individual, in the form of a special charter, and a judgment of the State Supreme Court in favor of the state was brought to this court for review. In such case, under the ruling of the opinion that "great weight" should be given to the state court's decision,—a "marked influence on the decision of the question" should be exercised by it,—this "great weight," this "marked influence" of the state court decision might be controlling, and might therefore lead to a wholly different and opposite decision of the *same question of construction on the same language* from that which would be given if the contract was between two individuals.

In both the cases supposed this court would exercise the same appellate jurisdiction, and the question to be determined would be the same question of construction. In both cases there would be the same power and duty in the court to decide the question for itself, in the exercise of its independent judgment, and yet, under the ruling of the opinion, the result might be that this court, in the exercise of the same independent judgment, and giving

construction to the same language, might decide this same question one way in the one case and the other way in the other, on precisely the same arguments for and against the particular construction.

Why should there be this different rule, because in the case before the court the particular judgment being reviewed is a decision of a State Supreme Court instead of a Federal Circuit Court, and the contract is a contract between the state whose court rendered the decision instead of a contract between two individuals?

So far from there being any just reason why the decision of the State Supreme Court should be given "great weight," should have this "marked influence on the decision of the question in this court," which would not be given to it and which it would not have if the judgment under review were the judgment of a Federal court, or if the contract was a contract between two individuals instead of between the state and an individual—and which, as we have seen, might be controlling, and therefore lead to a wholly different decision —the reason is the other way.

One of the fundamental reasons for creating the Federal courts, and giving them jurisdiction over the class of cases over which they are given jurisdiction, including cases involving the enforcement of the provision of the Federal constitution that no state shall pass any law impairing the obligation of a contract, was that the Federal courts were presumed to be removed from and beyond the influences of changes in local conditions and policy, to which the courts of the state might be subject. Because of this, it was a peculiarly appropriate and wise provision which gave this court jurisdiction to review the judgments of the highest court of a state, sustaining a law passed by the legislature of the state which it was claimed violated the obligation of a contract.

And the reason for this provision applies with peculiar force in cases in which the contract, the obligation of which it is claimed is violated by the law passed by the state legislature, is a contract between the very state whose legislature passed the law and in which the court of the state sustained the law on its own construction of the contract.

The possibility that the same considerations—the same local conditions or policy—which led the legislature of the state to pass the law claimed to be violative of the obligation of a contract with the state, might also influence the court of the state to sustain the law, was one of the main reasons for conferring on this court, as a court beyond these conditions and influences, a revisory jurisdiction over the judgment of the state court, and is a forcible reason why less rather than greater weight should be given to the decision of the State Supreme Court than should be given to the same decision of the same question by a Federal court.

See the following cases, cited *infra:*

Cohens v. *Virginia*, 6 Wheat., 264.
Martin v. *Hunter's Lessee*, 1 Wheat., 304.
Dodge v. *Woolsey*, 18 How., 331.
Delmas v. *Ins. Co.*, 14 Wall., 660.

So the fact that a case involves the construction of a contract between a state, in whose favor the state court rendered its decision, and an individual, instead of a contract between two individuals, affords no reason why a weight should be given to the state court decision of the same question in the one case, which is not given to it in the other.

On the contrary, the jurisdiction conferred on this court to review the judgment of the state court in both cases, is given by the same general language, and is based on the view that contracts between the state and an individual, whether

in the form of a charter granted by its legislature or of an ordinary contract signed by its executive officers, stand on the same footing and are subject to the same rules as any other contract.

And, so far from there being any reason why the decision of the state court giving a particular construction in favor of the state should be given a weight and effect in this court, which it would not have in a case involving a contract between two individuals, the argument is the other way.

In the case of the contract to which the state is a party, there would be the danger that the state court, being subject to the same conditions and influences which led the legislature of the state to pass the law complained of, might not decide impartially and uninfluenced by such conditions and changes; while in the case of a contract between two individuals, there would be no influence or tendency to favor the one as against the other, in giving a construction to the contract.

In *Cohens* v. *Virginia*, 6 Wheat., 264, Mr. Chief Justice MARSHALL says (p. 386):

"States may legislate in conformity to their opinions and may enforce those opinions by penalties. *It would be hazarding too much to assert, that the judicatures of the states will be exempt from the prejudices by which the legislatures and people are influenced, and will constitute perfectly impartial tribunals. In many states the judges are dependent for office and for salary on the will of the legislature.* The constitution of the United States furnishes no security against the universal adoption of this principle."

In *Martin* v. *Hunter's Lessee*, 1 Wheat., 304, the court (Mr. Justice STORY delivering the opinion) say (p. 343):

"In respect to the powers granted to the United States they (the state courts) are not independent; they are expressly bound to obedience by the letter of the constitution.

* * * The constitution has presumed (whether rightly or wrongfully we do not inquire) that *state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct or control, or be presumed to obstruct or control, the regular administration of justice."*

In *Dodge* v. *Woolsey*, 18 How., 331, the court, referring to this court and the jurisdiction given to it by the Constitution and the reasons on which it was based, quotes with approval (p. 357) the following language from the Federalist:

"To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatures, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort, a uniform rule of civil justice. This is the more necessary where the frame of the government is so compounded that the laws of the whole *are in danger of being contravened by the laws of the parts.* In this case, if the particular tribunals are invested with the rights of ultimate decision, besides the contradictions to be expected from difference of opinion, *there will be much to fear from the bias of local views and prejudices, and from the interference of local institutions.* As often as such an interference should happen, *there would be reason to apprehend* that the provisions of the particular laws might be preferred to those of the general laws from the deference with which men in office naturally look up to that authority *to which they owe their official existence."*

In *Delmas* v. *Ins. Co.*, 14 Wall., 660, the court (Mr. Justice Miller delivering the opinion) at page 668, say:

"This court has always jealously asserted the right, when the question before it was the impairing of the obligation of a contract by state legislation *to ascertain for itself whether there was a contract to be impaired.* If it were not so, the constitutional provision *could always be evaded by the state courts giving such construction to the contract*, or such decisions concerning its validity, *as to render the power of this court of no avail in upholding it against unconstitutional state legislation."*

2. *The court's ruling now under consideration is not supported by the case cited in the opinion* (*Wilson* v. *Standefer*, 184 U. S., 399), *nor by any of the previous cases in this court on the same subject, but, on the contrary, all of these cases are based on grounds and reasons which have no application to the case before the court.*

The court, in support of its conclusions that "great weight" should be attached to the decision of the State Court, and that such decision "is entitled to exercise *a marked influence* on the question," cites and quotes from *Wilson* v. *Standefer*, 184 U. S., 399.

The court quotes the following language of the opinion:

"Especial respect should be had to such decisions (of state courts) when the dispute arises out of *general* laws of a state regulating its exercise of the taxing power or relating to the state's disposition of its public lands. In such cases it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason as well as the meaning of the laws, and knowledge of such particulars will most likely be found in the tribunals whose special function is to expound and interpret state enactments."

As to this case we say:

In that case, there was a Texas statute, providing for the sale of lands belonging to the state, which contained, in one of its sections, a provision for the forfeiture, by a judicial proceeding, of the contract of purchase in the event of default in the payment of interest, and land was sold under this statute. After the sale, the Texas legislature passed a statute, which authorized a forfeiture of contracts for the sale of state lands in the event of default in the payment of interest, without a judicial proceeding.

The Supreme Court of Texas held that the later statute merely affected the remedy on the contract and did not impair its obligation—that the provision in the earlier act in

regard to forfeiture did not constitute an essential part of the contract, but was merely in effect a general law as to the remedy.

On writ of error, this court expressly held that this conclusion of the Supreme Court of Texas was correct.

This court said (184 U. S., pp. 415-416):

"We agree with the conclusion of the Supreme Court of Texas that no contract rights of a purchaser under the act of 1879 were impaired by the provisions of the subsequent act of 1897; that the twelfth section of the act of 1879, was not, in legal contemplation, a stipulation by the state that the only remedy which might be resorted to by the state was the one therein provided for; that in the language of Chief Justice MARSHALL 'the distinction between the obligation of a contract and a remedy given by the legislature to enforce that obligation, exists in the nature of things, and without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation may direct.' *Sturges* v. *Crowinshield,* 4 Wheat., 122."

And it is perfectly evident from the reasoning of the court, in other passages of its opinion, that it entirely agreed with the opinion of the Supreme Court of Texas on the point.

In the opinion in 184 U. S., immediately preceding the passage quoted by the court in the opinion on file, is the following passage:

"As the general rule is that the interpretation, put on a state constitution or laws by the Supreme Court of such state, is binding upon this court, and as our right to review and revise decisions of the state court in a case where the question is of an impairment by legislation of contract rights, is an exception, perhaps the sole exception, to the rule, it will be the duty of this court, even in such a case, to follow the decision of the state court, when the question is one of doubt and uncertainty."

Taking the language just quoted in connection with the passage quoted by the court from the opinion in 184 U. S.,

and it is perfectly clear that the case is not an authority for the propositions laid down in the opinion on file on this point.

(1) In the first place, it is evident that the case did not require the court to lay down any such proposition as that for which it is cited in the opinion on file. It was, as we have already said, a case in which this court was clearly of the opinion that the decision of the Supreme Court of Texas was correct, and this being so, there was no necessity whatever for the court's discussing what, if any, influence that decision should have upon this court in passing on the question.

In any view, therefore, even if the passage relied on in the opinion on file could be held in any way to support the proposition for which it is cited, it was a mere *obiter dictum.*

(2) But *further,* we submit that no such doctrine, as is laid down in the opinion, derives any support from the passage quoted from the case in 184 U. S.

We submit that all that was expressed in the passage quoted from that case was the well known rule referred to, *infra,* laid down in *Burgess* v. *Seligman,* 107 U. S., 20.

(3) The statute, the construction of which was involved in the particular case cited in the opinion was a *general* law of the state, and the view expressed was in terms based on this fact. The court say: "Especial respect should be had for such decision where the dispute arises out of *general* laws of the state."

In the case before the court the question is not as to the construction of a *general* law of the state.

The sole question is as to the construction of plaintiff's special charter, *a special grant to it alone.*

Such a special charter, it has been uniformly held, stands as to the state on the same footing as if, instead of a grant by the legislature, *there was an ordinary contract, executed by the executive officers, acting by authority of the state.* The only difference is that in the case of the charter the state acts directly through the legislature in making the contract, by the grant of the charter, which, when accepted, becomes a contract with mutual obligations, and in the other case the state acts through its executive officers, exercising a delegated authority.

The decision by the State Supreme Court in the case before the court was not, as the language of the opinion assumes, a decision of a question "under the constitution or *laws* of its own state," or a decision of " a dispute which arose out of the *general* laws of the state," or an " interpretation " by the State Court " of the *statutes* of its own state."

The distinction is illustrated by the previous decisions of this court on the same points, beginning with *Burgess* v. *Seligman*, 107 U. S., 20, on which *Wilson* v. *Standefer* was presumably based.

In every one of these cases, in which weight was given to the decision of the State Court, the statute, the construction of which was involved, was a *general* law of the state. See

Burgess v. *Seligman*, 107 U. S., 20.

Board of Liquidation, etc., v. *Louisiana*, 179 U. S., 638.

And in these cases the decisions of the State Court referred to as giving a construction to the *general* law, and therefore entitled to weight, were decisions in other cases between other parties, and *not the very decision before the court for review.*

(4) In the leading case of *Burgess* v. *Seligman*, in which the doctrine of these cases was first clearly stated, and in the cases following it, the jurisdiction of the Federal courts arose out of the diversity of citizenship existing between the parties, and this fact furnishes the explanation and illustrates the meaning of the rule there adopted and applied.

It is clear that where a Federal court, in the exercise of a jurisdiction dependent upon the diverse citizenship of the parties, is called upon to decide upon the construction of some state statute or constitution, the situation is wholly different from that which is presented when the very basis and occasion of the jurisdiction of the Federal court is the existence of a Federal question, involving the construction of some contract of the state. In the first case, a decision by the United States Supreme Court is in the exercise of a jurisdiction merely concurrent with that of the state courts, and is in no way controlling or binding upon the state courts; in the second case, the decision of the United States Supreme Court is in the exercise of an appellate jurisdiction, and is final and conclusive upon the state courts, as well as upon the lower Federal courts.

The "balanced with doubt" doctrine, as it is stated in *Burgess* v. *Seligman*, 107 U. S., 20, and the line of cases following it, was adopted, as this court then said, in order to avoid confusion in cases where the jurisdiction of the state and Federal courts was concurrent, and there was no final tribunal to review the judgments of both courts. The reason of the rule stated in *Burgess* v. *Seligman*, therefore, wholly fails when applied to cases which involve a Federal question,

and in which the judgment of the United States Supreme Court is final as to both state and Federal courts. In the exercise, therefore, of this final appellate jurisdiction in cases in which the very ground of its jurisdiction is the existence of a Federal question, there is no more reason why the United States Supreme Court should attach any greater weight to the decision of a state court than to the decision of a Federal court. This must be so in cases where the contract in question is between individuals, and if contracts with the state are to be held to present any Federal question at all, the rule of construction to be applied to them cannot consistently be different.

The Supreme Court in all such cases is required to review, as a final appellate tribunal, the decisions of both state and Federal courts. It is not deciding a question of general law, or the construction of some general state statute, as to which the state courts may, if they choose, continue to hold a different view. It is deciding a question of construction as to a particular contract, affecting only the parties before it, in a case in which its judgment is, by the constitution and laws of the United States, made final. Under such circumstances, it is impossible for this court to adopt consistently, as the ground of its decision in such a case, a rule which gives to the decision of one of two lower courts of concurrent jurisdiction greater weight than is given to the decision of the same question by the other court.

To enlarge, as the court does in this case, the "balanced with doubt" rule, applied in such cases as *Burgess* v. *Seligman*, to a principle which makes the decision of the State Court conclusive unless "clearly erroneous," so that this court feels bound to follow it, even though "with some hesi-

tation," is, so far as it goes, an absolute surrender of the appellate jurisdiction of this court.

We submit that it is impossible for an appellate court to mantain consistently such an attitude.

(5) The reason given by the court in 184 U. S. why this "especial respect should be had" to State Court decisions "where the dispute arises out of *general* laws," is that "knowledge" of "the situation and history of the country at the time the law was passed will most aptly be found in" the courts of the State.

This reason does not apply to the case before the court.

The decision of the State Supreme Court in 174 Ill. was rendered more than forty years after the charter in question was granted, and by a court organized under wholly new conditions, and twenty-five years after a pronounced change in the policy of the state as to exemptions from taxation by the adoption of the constitution of 1870 and the passage of the new revenue law of 1872, to give effect to this change of policy.

As to "the history and situation of the country" at the time the particular charter was passed (forty years before the decision was rendered), the particular judges could have no personal knowledge. In fact this "history and situation of the country," so far as they bore on the construction of the charter, were matters shown either in the published laws or in the general history of the state, of which this court has the same judicial knowledge as the State Court.

So far as the State Court, as organized at the time the decision was made, had any knowledge of or could be influenced by surrounding conditions, they were the changed conditions which resulted in the change of the constitution and laws of the state on the subject of exemption from taxation,

and at a time when these changed conditions had existed for more than twenty-five years.

In fact, the particular judges who rendered the decision had presumably formed their views on the general subject under these new and changed conditions, and under the influence of this changed policy.

And as we have shown *supra,* it was because of just such possible changes in local conditions, which might lead to a repudiation under the form of law of contracts entered into in good faith, that the Federal Supreme Court was given a jurisdiction to review the decisions of the State Supreme Court, for the precise reason that it is removed from, and presumably uninfluenced by, these changed conditions. One of the very objects of this revisory power would be defeated by giving to the State Court decision the effect given it by the majority opinion.

III.

THE REASONING OF THE OPINION OF THE STATE COURT IN 174 ILL., WHICH THIS COURT QUOTES AND ADOPTS AS THE SOLE BASIS OF ITS DECISION, GIVING THE SAME CONSTRUCTION TO THE EXEMPTION PROVISION WHICH THE STATE COURT GAVE TO IT, IS CLEARLY ERRONEOUS, AND RESULTS IN GIVING TO THE WORDS "SAID SEMINARY" AND "BELONGING TO" IN THE PROVISION A MEANING WHICH IS WHOLLY UNREASONABLE AND CONTRARY TO THE MANIFEST INTENTION OF THE PROVISION.

The reasons in support of this proposition, with references to the brief, are fully stated *supra.*

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I hereby certify that, in my opinion, the foregoing petition for a rehearing is well founded in point of law.

(Signed) JOHN J. HERRICK,
Attorney for Plaintiff in Error.